IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 8634 of 2005

Between:

Tirupathi Municipality, Rep by its Commissioner,
Tirupathi, Chittoor District, Andhra Pradesh

..... PETITIONER

AND

1 The Chairman Cum Presiding Officer, Industrial

Tribunal Cum Labour Court Ananthapur.
2 Sri Ch. Krishnaiah, S/o. Sri Muniswamy,
R/o. Tirupathi, Chittoor District.
3 Government of A.P. Rep by its Secretary, M.A. & UD Dept.,

Secretariat, Hyderabad.
4 The Commissioner and Director of Municipal Administration,

MCH Complex, IV Floor, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue order an appropriate writ, Order or Direction more in the nature of Writ of Certiorari calling for the records relating to I.D.No. 128/2002 on the file of the court of Chairman-cum-presiding officer, Industrial Tribunal-cum-Labour Court, Ananthapur, and quash the award passed in I.D.NO. 128/2002 dated 15-7-2004 arbitrary, and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case

Counsel for the Petitioner:MR.K.BATHI REDDY

Counsel for the Respondents: GP FOR LABOUR

The Court made the following:

O R D E R

This writ petition is filed challenging the award in I.D.No.128 of 2002 dated 15.7.2004, declaring the proceedings issued by the present petitioner as illegal and arbitrary and directing the writ petitioner and the 3rd and 4th respondents herein to continue the 2nd respondent herein in the service up to the age of 60 years. As he was already retired from service by the date of Award, he was directed to be treated in service till 31.1.2004 and pay him the salary till that time and all other retirement benefits.

The learned counsel appearing for the petitioner herein contended that the 2nd respondent herein was discharging his post as Tap Inspector which is the supervisory post and he was drawing salary of more than Rs.8,700/- per month and therefore, he is not a workman. Without considering that aspect, the impugned award is passed and hence he prays to allow the Writ Petition.

On the other hand, the learned counsel appearing for the respondents herein contended that the 2nd respondent herein who worked as Tap Inspector falls within the meaning of 'workmen' and this Court, by an order, dated 12.3.1998 in W.P.No.2235 of 1998 confirmed the order of the Tribunal, wherein the 3rd respondent therein was also Tap Inspector. The Division Bench of this

Court upheld the said Judgment and the order of the Tribunal became final. Hence, there are no grounds to interfere with the order under challenge.

The case of the 2nd respondent herein, who is the petitioner in I.D.No.128 of 2002 is that he worked as Tap Inspector in Tirupati Municipality. The petitioner herein, by virtue of proceedings dated 28.8.2001, asked the 2nd respondent to retire at the age of 58 years on attaining superannuation. Challenging the same, the 2nd respondent herein raised I.D.No.128 of 2002, where-under the Tribunal came to the conclusion that the 2nd respondent falls under the definition of workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (for short 'the Act') based on the evidence available on record. There cannot be any dispute that the findings of the Tribunal cannot be interfered with unless and until such findings are not based upon any evidence and the said findings are perverse. The findings are that the 2nd respondent herein used to repair the pump-sets, arrest leakages, maintains the pipelines and also lays new pipelines including house connections. Even the witness examined on behalf of the management did not say that the 2nd respondent was attending any supervisory duty. The definition of workman under Section 2(s) of the Act, would clearly indicate that when a person is doing manual, unskilled, skilled, technical operational, electrical or supervisory work for hire or reward, that does not include any such person under any of the following four categories:

i. Who is subject to the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (45 of 1951) or the Navy Act, 1957 (62 of 1957), or

ii. Who is employed in the police service or as an officer or other employees of a prison or;

iii. Who is employed mainly in a managerial or administrative capacity; or

iv. Who being employed, in a supervisory capacity drawn wages exceeding one thousand six hundred rupees per men-sum or exercises, either by the nature of the duties attached to the office or by reason of a managerial nature.

The learned counsel for the petitioner herein would maintain the norms provided under Clause-(iv) of Section 2(s) of the Act, wherein, if a person is drawing a salary exceeding Rs.1,600/- per mensum, he is not a workman. This Court is unable to accept the said contention, in view of the fact that this clause applies only to the persons who are employed in the supervisory capacity. No

doubt, the 2nd respondent herein was drawing nearly Rs.8,700/- at the time of his retirement, but the salary alone cannot be taken into consideration to decide whether a particular person comes within the meaning of 'workman' or not. It is the supervisory capacity of the employee that can be a determinative factor. Since there is no evidence available on record to show the 2nd respondent discharged his duties as supervisory capacity for the post of Tap Inspector, the learned Tribunal came to the right conclusion. In similar circumstances, this Court in W.P.No.2235 of 1998 dated 12.3.1998 confirmed the award passed therein. In that case also the petitioner therein was working as Tap Inspector and he was also entrusted with the duties of maintenance of water supply of main lines, leakage of water etc. It is the specific case of the 2nd respondent herein that his duties are to maintain the water supply of main lines and also to testify the leakage of water

In that view of the matter, the impugned order under challenge does not suffer from any incurable legal infirmities so as to call for interference of this Court. The Writ Petition is devoid of merit and it is dismissed accordingly. In the circumstances of the case, there shall be no order as to costs.

Justice K.C.BHANU.

6th July 2005.

BCS

ASSISTANT REGISTRAR

To

1. The Chairman Cum Presiding Officer, Industrial

Tribunal Cum Labour Court Ananthapur.
2 The Secretary, M.A. & UD Deppartment, Government of A.P.,

Secretariat, Hyderabad.
3 The Commissioner and Director of Municipal Administration,

MCH Complex, IV Floor, Hyderabad.,

4. 2.CCs to G.P. for Labour, High Court of A.P Building, Hyderbad (OUT)

5. 2 CD copies.